## **Request for Reconsideration after Final Action**

## The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79109797
LAW OFFICE ASSIGNED	LAW OFFICE 108

### MARK SECTION (no change)

#### **ARGUMENT(S)**

Attached hereto is a Letter of Consent executed by Registrant and Applicant setting forth the factors they believe that support that their respective amrks are capable of co-existing without confusion.

It is respectfully requested that based thereon the Examining Attorney withdraw the objection and allow the mark for publication. In this regard, it is noted that the Court of Appeals for the Federal Circuit has stated on numerous occasions that the Examining Attorney is required to accord due deference to letters of consent. This is based on the fact that if the registrant and applicant believe that confusion is unlikely, the Examiner should respect the parties' business acumen. In *In re E.I. du Pont de Nemours & Co.*, 177 USPQ 563, 568, the Court of Customs and Patent Appeals stated:

[W]hen those most familiar with use in the marketplace and most interested in precluding confusion enter agreements designed to avoid it, the scales of evidence are clearly tilted. It is at least difficult to maintain a subjective view that confusion will occur when those directly concerned say it won't. A mere *assumption* that confusion is likely will rarely prevail against uncontroverted evidence from those on the firing line that it is not.

See also Bongrain International (American) Corporation v. Delice de France Inc., 1 USPQ 2d 1775 (CAFC 1987); In re Leonard S.A., 2 USPQ 2d 1800 (TTAB 1987); and Amalgamted Bank of New York v. Amalgamated Trust & Savings Bank, 6 USPQ2d 1305 (CAFC 1988).

Applicant has filed a Notice of Appeal to protect its rights.

However Applicant beleives that the attached evidence supports withdrawal of the refusal and allowance of the application.

be remanded to the Examining Attorney for allowance for publication.

#### **EVIDENCE SECTION**

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_216759226-122241854ART_Racing_Technology_Consent_5.2.13.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\097\79109797\xml7\RFR0002.JPG

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	\\TICRS\EXPORT16\IMAGEOUT16\791\097\79109797\xml7\RFR0004.JPG	
DESCRIPTION OF EVIDENCE FILE	Executed Letter of Consent.	
SIGNATURE SECTION		
RESPONSE SIGNATURE	/Julie B. Seyler/	
SIGNATORY'S NAME	Julie B. Seyler	
SIGNATORY'S POSITION	Attorney of record- NY Bar	
SIGNATORY'S PHONE NUMBER	212-949-9022	
DATE SIGNED	05/02/2013	
AUTHORIZED SIGNATORY	YES	
CONCURRENT APPEAL NOTICE FILED	YES	
FILING INFORMATION SECTION		
SUBMIT DATE	Thu May 02 12:29:36 EDT 2013	
TEAS STAMP	USPTO/RFR-216.75.92.26-20 130502122936256912-791097 97-5008f4a312a6e8a4ad041a 08483507f9957d4c5e3d949df e3b9310d2cd62cef-N/A-N/A- 20130502122241854790	

PTO Form 1930 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 05/31/2014)

# Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. 79109797 has been amended as follows:

## **ARGUMENT(S)**

In response to the substantive refusal(s), please note the following:

Attached hereto is a Letter of Consent executed by Registrant and Applicant setting forth the factors they believe that support that their respective amrks are capable of co-existing without confusion.

It is respectfully requested that based thereon the Examining Attorney withdraw the objection and allow the mark for publication. In this regard, it is noted that the Court of Appeals for the Federal Circuit has stated on numerous occasions that the Examining Attorney is required to accord due deference to letters of consent. This is based on the fact that if the registrant and applicant believe that confusion is unlikely, the Examiner should respect the parties' business acumen. In *In re E.I. du Pont de Nemours & Co.*, 177 USPQ 563, 568, the Court of Customs and Patent Appeals stated:

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Applicant has filed a Notice of Appeal to protect its rights.

However Applicant beleives that the attached evidence supports withdrawal of the refusal and allowance of the application.

be remanded to the Examining Attorney for allowance for publication.

#### **EVIDENCE**

Evidence in the nature of Executed Letter of Consent. has been attached.

## **Original PDF file:**

evi\_216759226-122241854\_. ART\_Racing\_Technology\_Consent\_5.2.13.pdf

**Converted PDF file(s)** (3 pages)

Evidence-1

Evidence-2

Evidence-3

#### SIGNATURE(S)

## **Request for Reconsideration Signature**

Signature: /Julie B. Seyler/ Date: 05/02/2013

Signatory's Name: Julie B. Seyler

Signatory's Position: Attorney of record- NY Bar

Signatory's Phone Number: 212-949-9022

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 79109797

Internet Transmission Date: Thu May 02 12:29:36 EDT 2013 TEAS Stamp: USPTO/RFR-216.75.92.26-20130502122936256

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